

# COVID-19 in Estonia: A Year in Review

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The first coronavirus infection in Estonia was diagnosed on [27 February 2020](#). Immediately, some steps were taken by the Government to deal with the rapidly evolving and changing situation, including placing some restrictions on freedom of movement especially on people in quarantine. To further tackle the emerging crisis the Government established a state of emergency on Estonian territory. This was done by [Order No. 76](#) of 12 March 2020. The [numbers](#) of infected in spring 2020 were low in comparison with the [numbers](#) of infected during the second wave in autumn-winter 2020. On the day when the emergency situation was declared there were only 27 COVID-19 positive people. There were also doubts expressed, including by the [Chancellor of Justice](#), of the need for declaring the emergency situation as it was viewed that the ordinary legal framework was capable of dealing with the situation. However, the decision was made on the basis of the best available knowledge and experience at the time with the belief that it was needed for an effective response to the crisis. The state of emergency (*eriolukord*) was declared based on clause 8 of § 87 of the [Constitution of the Republic of Estonia](#) and § 13, subsection 1 of § 19, subsection 1 of § 21 and § 23 of the [Emergency Act](#) (*Hädaolukorra seadus*). This Act primarily regulates two types of emergencies. It provides the legal bases for management of emergency (*hädaolukord*), but also governs the declaration, resolution and termination of an emergency situation (*eriolukord*) if it is not possible to resolve the emergency (*hädaolukord*) without extra measures.

In order to [resolve](#) the emergency situation, the Government and the appointed head of the emergency situation (the Prime Minister) established various [measures](#) aimed at preventing the epidemic spread of the virus.

## Strict Emergency Measures in Spring

On 20 March 2020, the Permanent Representation of Estonia to the Council of Europe [informed](#) the Secretary General of the Council of Europe, pursuant to Article 15 of the European Convention on Human Rights, that Estonia was exercising the right to derogate from its obligations under the Convention in the entire territory of Estonia. This particular step was extensively debated: some called it a [foreign policy blunder](#); some argued that the decision was reasonable, however, should have [required a local debate](#) that [involved the Parliament](#); some argued that the step itself partially contradicted the [Constitution](#). All in all, this debate was evidence that some fundamental constitutional issues need legal and scholarly attention.

Among [the emergency measures adopted by the Government of Estonia](#), regular class-room studies in primary, basic, secondary and vocational schools, as well as higher education establishments and universities, were suspended as of 16 March 2020 and switched to remote and home studying. Also, hobby education

was suspended. All public gatherings were prohibited; museums, theatres and cinemas were closed to visitors; all performances, concerts and conferences, as well as sports competitions were prohibited. Social welfare institutions, hospitals, and detention facilities were subject to a visiting ban. Later restrictions involved closing of shopping centres except essential (e.g. grocery) shops. Problematically, many doctor appointments and non-emergency hospitalisations were suspended. People in residential homes were not allowed to leave. However, there was no curfew or similar restrictions on freedom of movement as in some European states, provided that people followed the so-called '2+2' rule (max two people together, two meters from others; with exemptions for families/households).

On 14 March 2020, additional movement restrictions for several islands were introduced. Only people who had a permanent residence on the islands were allowed to travel to the territories if they did not show symptoms of COVID-19. Mainland people on the islands were allowed to return home.

On 15 March 2020, it was decided to restrict crossing of the Schengen internal and external border temporarily and reintroduce border controls in order to contain the spread of the coronavirus (effective 17 March 2020). Only citizens of Estonia and holders of an Estonian residency permit or right of residence could enter Estonia, as well as foreign citizens whose family member lives in Estonia. At the border control, travel documents and medical symptoms were checked. The requirement of a two-week quarantine for everyone entering the country was also imposed.

## More Nuanced Restrictions During the Second Wave

According to the original order, the emergency situation was meant to last until 1 May, but was later extended for little more than two weeks. The [order](#) to end the state of emergency came into force on 18 May 2020. As of this date, the measures which were imposed by the Government ceased to operate as emergency situation measures. Therefore, Estonia stopped exercising its right to derogate from its obligations under the European Convention on Human Rights and the provisions of the Convention were again being fully executed from that date. However, for keeping control of the pandemic some restrictions remained, or more accurately, came into force on 18 May. Although the state of emergency (*eriolukord*) ended, the health-related emergency (*hädalukord*) still remained (English translation of these different situations in law confusingly uses the same term for both situations). The Government imposed some restrictions on freedom of movement and on holding public meetings and events. They were adopted on the basis of the [Communicable Diseases Prevention and Control Act](#) and [State Borders Act](#). These restrictions were again tightened from 24 September 2020 due to rapidly increasing infections.

However, during the second wave of the virus spread in autumn-winter 2020, no emergency situation (*eriolukord*) was declared. There has been an attempt to find a more adequate balance between protecting health and lives due to the coronavirus and other rights and interests (including economic ones). There also has been an attempt to nuance restrictions. For example, at the beginning of December 2020, the Government placed additional restrictions on certain regions in Estonia that have

been more severely impacted by the virus while giving exemptions ([although not without controversy](#)) to, for example, religious communities. One could also argue that, perhaps more than earlier in the spring, regular revisions of restrictions and assessment of their effectiveness and proportionality has been commonplace. For example, the aforementioned regional differences in restrictions have been changed due to their ineffectiveness.

The change in the approach in autumn can also be attributed to the fact that there was criticism and debate over the lack of legality of some adopted measures in spring 2020. The Government had to act to protect lives and health of people without sometimes being backed up by proper legislation. This was also brought up by the [Chancellor of Justice](#) and other [prominent lawyers](#). The Estonian Constitution is very minimalistic on the procedures related to an emergency situation (*eriolukord*). It simply states that in the case of a natural disaster or a catastrophe, or for prevention of the spread of an infectious disease, the Government is responsible for declaring an emergency situation (*eriolukord*) throughout the state or in a part thereof. The Constitution does not require any parliamentary input on this matter. For example, only parliament can declare a state of emergency (*erakorraline seisukord*) in the case of a threat to the constitutional order of Estonia (§ 129 of the Constitution). The Emergency Act as the basis of the measures taken during the pandemic (both in spring and autumn/winter) could also be criticised for not giving a solid foundation for restricting rights and freedoms. In sum, criticism pointed to the lack of legislative action to provide for the situation at hand. The ordinary laws covering the emergency situation were insufficient and even contradictory in spring. Without having a chance to go into greater detail on the matter here, it can be noted that this situation was to some degree remedied by autumn which also enabled the adoption of measures without declaring the emergency situation (e.g. Communicable Diseases Prevention and Control Act as well as Emergency Act were amended and came into force on 18 May 2020). Various non-legal factors, such as experience gained in crisis management probably played a role as well.

## **The Effectiveness of Judicial and Legislative Scrutiny and Oversight**

In principle, there are no control-free administrative institutions in Estonia. Decisions, explanations and information at any level, be it the Government, the health board, the rural municipality head or the police officer, are open to legal challenge. According to the Emergency Act (the ground for preventive measures during both waves) § 24(5), the person in charge of the emergency situation issues, within their competence, orders in the form of administrative acts. Most orders issued at the time of the emergency situation and after that were general orders. According to the [Administrative Procedure Act](#) § 51(2) a general order is an administrative act which is 'directed at persons determined on the basis of general characteristics or at changing the public law status of things.' This also means that it can be contested in [administrative courts](#) by every person who is of the opinion that his or her rights and freedoms were violated.

All orders issued during the emergency situation in spring and after that mentioned the possibility to contest the order also in the administrative court. However, according to § 46(1) of the Code of Administrative Court Procedure an annulment action may be filed within thirty days after the date on which the administrative act was notified to the applicant (with some exemptions). Most orders were enacted with very short notice. Thus, it has been pointed out that the 30-day limit for the application is restrictive as the situation changed constantly: a restriction that was justified and proportional on the day it was enacted may have lost its proportionality after 30 days. The Supreme Court has, however, in its [earlier case law](#) given some leeway regarding deadlines in the case of general orders. The beginning of the term for contesting the general order depends on when it (directly) affects the rights of the addressee of the act.

The processing of applications in courts may also take some time. Despite that, it can be argued to be mostly positive that the law facilitates individual applications in emergency situations. However, [some scholars](#) also see it as problematic because it can delay the adoption of effective measures. The possibility to give permission to apply directly to the Supreme Court has also been discussed as an alternative.

The lack of possibility for parliamentary supervision of the orders has also been [pointed out](#) as a problem in the existing legal framework.

Not many challenged the orders of the Government in courts. The relative moderation and reasonableness of the restrictions applied in Estonia may have played a role here. On the other hand, the [Office of the Chancellor of Justice](#) became a popular addressee in spring. Complaints raised issues involving surveillance, data handling and protection, treatment of pupils with special educational needs, right to education, and many more. As noted above, during the emergency situation, extensive movement restrictions were imposed on the Estonian islands. The [Chancellor of Justice](#) received several complaints, for example, regarding people not being able to go to work on the mainland and mainland people not being able to use their summer homes on the islands. People were advised to apply for a special permit from the police and Border Guard Board. In order to get from the mainland to the island or from the island to the mainland, a special permit was applied for from the police almost 1900 times, out of which 1400 were granted.

## Regional and Local Response and Coordination

Estonia is a unitary state. The crisis management is quite centralized. The Crisis Management Committee of the Government coordinates the performance of the crisis management duties of authorities of executive power. However, the [Emergency Act](#) also sets forth a few principles for emergencies (*hädaolukord*), including the requirement that crisis management duties are performed according to the principle of subsidiarity at the lowest possible required level (§ 3). Thus, the committees are also established at the regional and municipal level. According to the Act, when the emergency (*hädaolukord*) evolves into a more severe situation and a state of emergency (*eriolukord*) is declared, then the situation is managed by the head of the emergency (who is accountable to Government) and, if necessary,

the municipal crisis management committees assists. For example, the extensive restrictions on freedom of movement to and from local islands during the state of emergency were adopted by the Government. In December, for example, more extensive restrictions on freedom of movement were placed on certain regions, for example, in Ida-Viru County compared to other regions of Estonia, based on Ida-Viru County's infection rate and researchers' assessment.

As noted, there has been an issue of legality of some of the measures taken, already during the first wave as well. This also exhibited itself [at the local level](#) when local governments were placing additional movement restrictions that did not have legal basis.

## **2021 Outlook: Recommendations for Governance, Democracy, Human Rights, and the Rule of Law**

History presents a few examples where emergency measures have been used to halt democratic governance ([also in Estonia in 1934](#)) and to suppress individual freedoms. One of the main recommendations that definitely applies to Estonia, but probably is true in many other countries as well, is that the laws regulating emergency situations should be carefully reviewed to uphold the principle of the rule of law and to guarantee that rights and freedoms will not be eroded arbitrarily by orders and measures that do not have a basis in laws. The supervisory mechanisms may also need a review to facilitate effective protection of people's rights and freedoms even in these challenging circumstances at hand. Preferably these revisions should take place in the normal democratic process and debate and not in a rushed, haphazard way during an emergency.

